

**JUDGE SANDRA R. KLEIN'S  
TRIAL PROCEDURES SUPPLEMENT TO LOCAL RULES**

**I. TRIAL BRIEFS**

Unless otherwise ordered by the court, trial briefs are required. Trial briefs must be filed at least seven (7) days before trial. Judge's copies of the trial briefs **must** be delivered to Judge Klein's chambers on the same day the briefs are filed.

The trial briefs **must** contain:

- (1) a concise statement of the facts of the case;
- (2) a short statement of any relevant procedural history, including the resolution of all motions;
- (3) a summary of the relevant law involved with supporting authorities;
- (4) a summary of the disputed issues of fact and the testimony that such party plans to introduce in an effort to prove its version of the disputed facts; and
- (5) a brief discussion of any anticipated evidentiary or other issues that the party believes are likely to arise at trial.

Unless specifically requested by the court, no additional trial briefs will be considered.

**II. PRETRIAL STIPULATION**

Unless otherwise ordered by the court, the parties must prepare and file a written joint pretrial stipulation pursuant to Local Bankruptcy Rule (LBR) 7016-1(b) through (f) not later than seven (7) days before trial. A judge's copy **must** be delivered to chambers the same day. The pretrial stipulation must contain the statements and information required by LBR 7016-1(b)(2).

In conjunction with the pretrial stipulation, the parties must meet and confer to attempt to stipulate to the authenticity and possible admissibility (without the necessity for live testimony) of the documents that have been exchanged. The court expects the parties to make good faith efforts to resolve all evidentiary issues.

After the court has determined whether to approve or deny the pretrial stipulation, the parties will be ordered to lodge an order approving or denying the pretrial stipulation according to the Lodged Order Upload program (LOU) procedures found in the Court Manual.

### III. PRESENTATION OF DIRECT TESTIMONY BY DECLARATION

The purpose of this procedure is to facilitate pretrial preparation and to streamline the trial process without sacrificing due process and a fair trial.

A. Except as provided herein, each party **must present the direct testimony of all of its witnesses, including expert witnesses, through the declarations of said witnesses.** The declarations must be signed under penalty of perjury and be otherwise admissible under the Federal Rules of Evidence. See, e.g., Lee-Benner v. Gergely (In re Gergely), 110 F.3d 1448, 1452 (9th Cir. 1997); Adair v. Sunwest Bank (In re Adair), 965 F.2d 777, 779-80 (9th Cir. 1992). Each declaration must set forth the direct testimony that the witness would give as though questions were propounded in the usual fashion. Each statement of fact or opinion must be separately, sequentially numbered and must contain only matters that are admissible under the Federal Rules of Evidence (e.g., avoiding redundancies, hearsay, and other objectionable statements).

B. All cross-examination, rebuttal, surrebuttal and appropriate impeachment evidence must be given by live testimony. The only oral testimony that may be offered at trial by a party through its own witnesses will be **strictly** limited to rebuttal testimony or such additional testimony on matters relevant to the outcome of the proceeding as may be specifically requested by the court at the time of trial.

C. If a witness refers in his/her declaration to an exhibit to be admitted into evidence, the exhibit must be identified in the declaration by exhibit number or letter. The exhibit itself need not be attached to the witness's declaration, but must be included in the exhibit binder or notebook and properly marked for identification. See section IV. Unless the parties stipulate to the admittance of an exhibit, the foundation for admittance of exhibits (other than for impeachment or rebuttal purposes) must be established in the declaration. Exhibits referenced in a declaration should be offered into evidence when the declaration is offered into evidence.

D. If a party is unable to obtain a declaration of a witness (such as, for example, in the case of a hostile witness), counsel for that party must file (by the applicable deadline for the filing of the witness's declaration) a declaration stating the name of the witness, a detailed summary of the expected testimony and why counsel was unable to obtain the witness's declaration. Failure to make every reasonable effort to obtain the declaration of a witness will result in the exclusion of such witness's oral testimony.

E. A party may present the direct testimony of a witness in the form of a transcript of a deposition of the witness, in which event the party must submit a declaration authenticating the excerpts from the transcript that contains the testimony the party wishes to introduce. Only the portions of the transcript that the party wishes to introduce should be attached to the declaration.

F. The declaration of a witness for a party will be admissible at trial, subject to timely objections, only if the declarant is present at trial and subject to cross-examination.

#### IV. EXHIBITS

A. All exhibits must be marked for identification before the trial begins. Each exhibit must be marked for identification at the bottom (right) of the first page of the exhibit. Unless the parties agree upon a unified, joint set of exhibits, the Plaintiff's exhibits must be marked in numerical order, and the Defendant's exhibits must be marked in alphabetical order (*e.g.*, Plaintiff's Exhibit 1, etc., Defendant's Exhibit A, etc.). If the parties agree on a unified, joint set of exhibits, the exhibits must be marked in numerical order.

B. All exhibits must be assembled in a binder or notebook. Each such binder or notebook must include as its first page an exhibit register. The exhibit register must include the following information for each exhibit:

Exhibit #	Brief Description	Date Admitted?	How Admitted? (Stipulation; Name of Witness, etc.)	How was Exhibit Used During Trial?
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C. At the beginning of trial, the parties must be prepared to stipulate into evidence all exhibits that are admissible for at least one purpose. Bona fide objections may be reserved, with the issue of admissibility deferred, until the exhibit is offered into evidence.

D. Immediately after the trial's conclusion, the parties must complete the exhibit register to indicate the date each exhibit was admitted, how it was admitted, and how the exhibit was actually used during trial. The completed exhibit register **must** be submitted to the court within one business day after the conclusion of trial. Please note that the court will only consider exhibits that were admitted **and** that were used during trial. For example, if the parties stipulated to the admissibility of an exhibit, but the exhibit was not referred to by a witness or otherwise used during trial, the exhibit will not be considered by the court.

#### V. DEADLINES FOR SUBMISSION OF DECLARATIONS, EXHIBITS AND OBJECTIONS

A. Plaintiff must submit to opposing counsel all declarations and exhibits comprising the Plaintiff's case-in-chief not later than thirty (30) days before trial.

B. Defendant must submit to opposing counsel all declarations and exhibits comprising the Defendant's case, together with any written objections to the admission of any of Plaintiff's exhibits or to the testimony contained in any of Plaintiff's witness declarations, not later than twenty-one (21) days before trial.

C. Plaintiff must submit to opposing counsel any written objections to the admission of any of Defendant's exhibits or to the testimony contained in any of Defendant's witness declarations not later than fourteen (14) days before trial.

D. All witness declarations and exhibits, together with any written objections to the admission of any of the exhibits or to any of the declarations or any portion thereof, must be lodged with Judge Klein's Courtroom Deputy at least seven (7) days trial. Each party must lodge sufficient copies of its exhibit binder (containing the exhibit register and all exhibits), for all parties, the witness stand, the court recorder, and the Judge.

E. At trial, each party must also have sufficient copies of exhibits, which the party expects to be used for impeachment or rebuttal, so that copies of such exhibits can be provided to the opposing party, the witness and the Judge.

F. Evidentiary objections will be adjudicated at the time a witness declaration or exhibit is offered into evidence. Any evidentiary objections to declaration testimony, which are not raised in a written objection filed within the applicable time limit set forth above, shall be deemed waived.

G. **No other declarations will be allowed.** The only additional evidence that a party may offer at trial is rebuttal evidence. If the court concludes that testimony a party seeks to offer is more accurately characterized as direct testimony than as rebuttal evidence, that testimony will be excluded.

## **VI. EXCERPTS FROM DISCOVERY DOCUMENTS**

A. **Deposition Transcripts.** Each party intending to offer any evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32, other than for impeachment or rebuttal, must lodge with Judge Klein's Courtroom Deputy the original deposition transcript, together with a copy of the transcript or pages from the transcript to be offered, marked to reflect the portions to be offered, pursuant to LBR 7030-1(b). The deposition transcripts must be lodged not later than the applicable deadline for submission of declarations, exhibits and objections set forth in Section V. Transcripts may be bound on the left side and do not have to be hole-punched or blue-backed.

B. **Other Discovery Documents.** Excerpts from interrogatories, requests for admissions, or other discovery documents to be offered at trial, other than those to be used for impeachment or rebuttal, must be filed pursuant to LBR 7026-2(c) not later than the applicable deadline for submission of declarations, exhibits and objections set forth in Section V.

## **VII. CONTINUANCE/POSTPONEMENT OF TRIAL DATE**

Trials will begin promptly at the scheduled date and time. Trial dates **will not be** continued or vacated absent good cause, on noticed motion, supported by competent

evidence. If a motion is filed requesting that a trial be continued, the parties will be contacted by Judge Klein's law clerk regarding whether the continuance has been granted or denied.

Parties are further advised that during the week before trial, the court may move the starting time or date of the trial. Judge Klein's Courtroom Deputy will advise the parties of any such change by telephone. All parties will be required to adjust their schedules accordingly.

## **VIII. SETTLEMENT**

Not later than five (5) days before the trial date, counsel for Plaintiff must telephone Judge Klein's Courtroom Deputy at (213) 894-5856 to report:

- (a) whether the parties intend to go forward with trial as scheduled;
- (b) if settlement is likely;
- (c) whether the time reserved for trial is realistic; and
- (d) any other relevant information.

Stipulations for settlement must be in writing, executed by each party or their counsel, and delivered to chambers before the trial date. If time constraints prevent reducing a settlement to writing before trial, all the parties, or their counsel, must (a) advise chambers of the settlement, and (b) appear at the time set for trial to recite the stipulation on the record.

## **IX. COMPLIANCE**

Failure to comply with these trial procedure instructions may result in the imposition of sanctions, including but not limited to, removal of the trial from the court's calendar or the exclusion of evidence (*e.g.*, witnesses who were not timely identified or exhibits that were not timely submitted).